

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs June 18, 2008

**JAMES R. HANKINS v. CHERRY LINDAMOOD, WARDEN**

**Direct Appeal from the Circuit Court for Wayne County  
No. 14250 Robert Holloway, Judge**

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**No. M2007-02545-CCA-R3-HC - Filed July 31, 2008**

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The petitioner, James R. Hankins, filed in the Wayne County Circuit Court a petition for a writ of habeas corpus in which he requested relief from his conviction for especially aggravated robbery, claiming that the indictment underlying the conviction was fatally flawed. The habeas corpus court dismissed the petition, finding that the petitioner had waived any potential defect in the indictment for failure to raise the issue before trial and that, regardless, the indictment was not defective. On appeal, the petitioner contests this ruling. Upon review of the record and the parties' briefs, we affirm the judgment of the habeas corpus court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed.**

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JERRY L. SMITH and ROBERT W. WEDEMEYER, JJ., joined.

James R. Hankins, Clifton, Tennessee, Pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Cameron L. Hyder, Assistant Attorney General, for the appellee, State of Tennessee.

**OPINION**

**I. Factual Background**

On February 12, 1995, the petitioner was convicted of felony murder and especially aggravated robbery. The petitioner was sentenced to life imprisonment and thirty years, respectively. Thereafter, on July 21, 2007, the petitioner filed a petition for a writ of habeas corpus, alleging that the especially aggravated robbery indictment failed to properly allege essential elements of the offense, and, therefore, "the trial court was without subject matter jurisdiction to hear the especially aggravated robbery charge." Specifically, the petitioner contended that the indictment failed to state that he put the victim in fear, to specifically name the weapon used, or to allege that he intended to

deprive the owner of the property by knowingly exercising control over the property without the owner's consent.

The State filed a motion to dismiss the petition, arguing that the petitioner had waived any defects in the indictment by failing to raise the issue prior to trial. Notwithstanding the waiver argument, the State also contended that the indictment was sufficient. The habeas corpus court agreed with the State and dismissed the petition, and the petitioner now appeals.

## **II. Analysis**

Initially, we note that the determination of whether to grant habeas corpus relief is a question of law. Summers v. State, 212 S.W.3d 251, 255 (Tenn. 2007). As such, we will review the trial court's findings de novo without a presumption of correctness. Id. Moreover, it is the petitioner's burden to demonstrate, by a preponderance of the evidence, "that the sentence is void or that the confinement is illegal." Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, § 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. See Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). However, "[s]uch relief is available only when it appears from the face of the judgment or the record of the proceedings that a trial court was without jurisdiction to sentence a defendant or that a defendant's sentence of imprisonment or other restraint has expired." Wyatt, 24 S.W.3d at 322; see also Tenn. Code Ann. § 29-21-101 (2000). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. Taylor, 995 S.W.2d at 83. "A void judgment 'is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant's sentence has expired.' We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal." Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting Taylor, 995 S.W.2d at 83).

Typically, challenges to an indictment are not proper for a habeas corpus action. Haggard v. State, 475 S.W.2d 186, 187-88 (Tenn. Crim. App. 1971). However, our supreme court has held that "the validity of an indictment and the efficacy of the resulting conviction may be addressed in a petition for habeas corpus when the indictment is so defective as to deprive the court of jurisdiction." Dykes v. Compton, 978 S.W.2d 528, (Tenn. 1998). It is undisputed that a valid indictment is essential to establish jurisdiction for prosecution. Id. Generally, an indictment is valid if the information contained therein provides sufficient information "(1) to enable the accused to know the accusation to which answer is required, (2) to furnish the court adequate basis for the entry of a proper judgment, and (3) to protect the accused from double jeopardy." State v. Hill, 954 S.W.2d 725, 727 (Tenn. 1997). Moreover, our supreme court has specifically noted that there is no need to conform to traditionally strict pleading requirements which are fraught with empty technicalities. Id. at 727-28.

The indictment in question charged, in pertinent part, that the petitioner:

on January 18, 1993, . . . did unlawfully, intentionally, knowingly and violently, engage in conduct, as a result of which [the victim] suffered serious bodily injury, and by the use of a deadly weapon, to wit: , and did obtain from the person of [the victim], one (1) Wallet and a sum of money, all under the value of five hundred dollars of the proper goods and chattels of [the victim], in violation of T.C.A. 39-13-403, against the peace and dignity of the State of Tennessee.

At the time of the offense, our code provided that especially aggravated robbery was robbery accomplished with a deadly weapon and where the victim suffers serious bodily injury. Tenn. Code Ann. § 39-13-403(a)(1)-(2). Robbery was defined as “the intentional or knowing theft of property from the person of another by violence or putting the person in fear.” Tenn. Code Ann. § 39-13-401(a). Theft was committed when someone, with the intent to deprive the owner of property, knowingly obtains or exercises control over the property without the owner’s effective consent. Tenn. Code Ann. § 39-14-103. Thus, the petitioner essentially complains that the indictment was fatally flawed because it failed to identify the specific weapon used and failed to specifically allege the elements of theft.

The instant indictment charging the petitioner with especially aggravated robbery tracked the language of the especially aggravated robbery statute. Generally, an indictment is sufficient if it states the offense charged in the words of the statute or in words which are equivalent to the words contained in the statute. State v. Tate, 912 S.W.2d 785, 789 (Tenn. Crim. App. 1995). Moreover, this court has previously upheld an indictment similar to the one at issue in the instant case. Marshall D. Johnson v. Kevin Myers, Warden, No. M2003-02424-CCA-R3-HC, 2004 WL 2387524, at \*2 (Tenn. Crim. App. at Nashville, Oct. 25, 2004). In sum, any alleged defect in the indictment was non-jurisdictional, and, as the habeas corpus court found, was waived for failure to raise the defect prior to trial. See Tenn. R. Crim. P. 12(b)(2); State v. Wyatt, 24 S.W.3d 319, 322 (Tenn. 2000). Accordingly, we conclude that the habeas corpus court did not err in dismissing the petition.

### **III. Conclusion**

Finding no error, we affirm the judgment of the habeas corpus court.

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NORMA McGEE OGLE, JUDGE